Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Accelerating Wireline Broadband Deployment	)	WC Docket No. 17-84
by Removing Barriers to Infrastructure	)	
Investment	)	

COMMENTS OF SOUTHERN COMPANY SERVICES, INC.

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EXECUTIVE SUMMARY

The electric and gas utility affiliates of Southern Company Services, Inc. ("Southern") have been transitioning to newer technologies, but still rely on carrier-provided copper facilities for service to many locations throughout their multi-state utility service areas. These facilities support SCADA to monitor and control the electric grid or gas distribution systems. They are also used for "teleprotection" systems to continuously monitor electric current and other parameters on high-voltage electric lines, detect fault conditions, and trip circuit breakers – all within 100 milliseconds or less -- to prevent widespread, cascading power outages. Although Southern supports introduction of new technologies, Southern has serious concerns that some of the proposals in this docket could have seriously detrimental impacts to critical infrastructure industries, including energy transmission and distribution systems.

Southern opposes a reduction in notice periods for copper retirement, particularly in the case of copper used in the delivery of communications service to electric and gas utilities. If anything, notice periods should be increased. Because of the often-times critical nature of services carried on these facilities, the definition of copper retirement should continue to include a failure to maintain copper facilities. The FCC should retain the expanded list of entities to be notified, including entities that directly interconnect with the incumbent carrier's network. Compliance with notification requirements is not so burdensome as to delay transition to next generation networks, yet the lack of adequate notice could jeopardize public safety, health and welfare, contrary to the congressional policy expressed in Section 1 of the Communications Act.

Any transition process must carefully address the interdependence between commercial communications networks and commercial electric systems; two critical infrastructure industries.

The interdependence between these industries has been a long-standing concern in relation to National Security and Emergency Preparedness ("NS/EP"), and has become even more acute with the transition to IP-based networks and consumers' reliance on commercial power for terminal equipment. Disruption of communications service to utilities could cause cascading disruption to operation of commercial telecom networks and to their customers. For similar reasons, the FCC's Rules should continue to require notice to customers regarding potential impact to terminal equipment.

Notice periods for applications to grandfather services, or to discontinue grandfathering, must be much longer than 10 days. As discussed above, transitions must not disrupt mission-critical communications, whether provided to government agencies or to non-government entities that support public safety, health, and welfare. A customer should not lose the right to receive direct notice of a planned discontinuance just because it has chosen to consolidate its service arrangements through another carrier.

For purposes of determining whether a "service" is being discontinued, the language of the tariff of service agreement should be given the strongest weight, but any ambiguity should be construed against the carrier, and users should be given the opportunity to present other information to aid in the analysis.

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Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment	)	WC Docket No. 17-84

COMMENTS OF
SOUTHERN COMPANY SERVICES, INC.

Southern Company Services, Inc. ("Southern"), on behalf of itself and its operating affiliates, hereby submits its comments on certain of the issues raised in the *Notice of Proposed Rulemaking ("NPRM"), Notice of Inquiry ("NOI"), and Request for Comment*, FCC 17-37, in the above-captioned matter. Southern's present comments are limited to addressing Sections II.A. and II.B. of the *NPRM* on retirement of copper and streamlining the Section 214(a) discontinuance process, and Section IV.A. of the *Request for Comment* on what constitutes a "service" for purposes of Section 214(a) discontinuance review.

I. Introduction

A. Southern Company

Southern Company Services, Inc. is a wholly-owned subsidiary service company of Southern Company, a holding company based in Atlanta, Georgia, which operates 11 regulated utilities serving 9 million customers in nine states. Southern Company owns four electric utility subsidiaries – Alabama Power Company, Georgia Power Company, Gulf Power Company, and Mississippi Power Company – which provide retail and wholesale electric service throughout a 120,000-square mile service area in Alabama, Georgia, Florida, and Mississippi. Southern

Company supplies wholesale electric power to municipalities, rural electric cooperatives, and other distribution providers through its Southern Power subsidiary, which operates natural gas, solar, wind, and biomass generating facilities in 9 states. Southern Company Gas provides natural gas distribution and storage in seven states: Illinois, Georgia, Virginia, New Jersey, Florida, Tennessee, and Maryland. Members of the Southern Company family use a variety of communications technologies and services to support the safe and efficient generation, transmission, and distribution of energy services to their retail and wholesale customers.

B. Southern's Continued Reliance on Copper Facilities

Southern's electric and gas affiliates have been transitioning to newer technologies, but they still rely on carrier-provided copper facilities for service to many locations. Southern has approximately 600 distribution or transmission substations that are served by leased copper facilities (either T1 or DS0) to provide critical Supervisory Control and Data Acquisition ("SCADA") as part of Southern's Substation Wide Area Network (SWAN). In addition, Southern leases about 50 analog data circuits; has PRI serving about 100 locations; has about 500 locations served by analog central office trunks; has about 400 locations served by Wide Area Network T1s; and plain old telephone service ("POTS") to many local offices, which are often located in rural areas, for telephone access (including 9-1-1 access), security and fire alarms, and for fax machines. Southern Company Gas also uses POTS lines for SCADA operations; *e.g.*, to monitor gas flows.

Southern's electric company affiliates use SCADA to monitor and control critical functions on the electric grid. Copper facilities are also used for teleprotection or "protective relaying" systems, which are designed to continuously monitor current and other parameters on high voltage lines, detect fault conditions, and issue a control signal to trip a circuit breaker. By isolating the fault and interrupting power flows, these systems can mitigate further negative

effects, such as a cascading outage to other portions of the interconnected transmission grid, thereby protecting lives and property.[1] Because electric current flows at nearly the speed of light in a vacuum, teleprotection link budgets for fault detection, transmission of control signals, and response (*e.g.*, opening breakers) are measured in milliseconds. Devices on either end of the line must be in continuous communication to compare operating parameters on either end of the line, and must be programmed to react as close to instantaneously as possible when a fault is detected. At the same time, these systems must be able to distinguish faults from other conditions to avoid inadvertent (false) tripping.

Southern's operating company affiliates generally require latency of less than 100 milliseconds for all command and control applications, with any increase in latency above 250 milliseconds to be unacceptable. Teleprotection systems are subject to the most extreme latency requirements because of their criticality to public safety and welfare.[2] "Best efforts" communications services are totally unacceptable, as are any services by which a third-party

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[1] In 2003, 55 million people in eight states and portions of Canada lost power for up to several days because of a cascading power outage that was triggered by a single fault; in this case, a sagging electric transmission line in Ohio that touched overgrown trees. "13 Years After: The Northeast Blackout of 2003 Changed Grid Industry, Still Causes Fear for Future," Electric Light & Power, August 23, 2016; available at http://www.elp.com/Electric-Light-Power-Newsletter/articles/2016/08/13-years-after-the-northeast-black-of-2003-changed-grid-industry-still-causes-fear-for-future.html (last visited June 15, 2017).

[2] These engineering criteria are consistent throughout the industry as a matter of safety. For example, guidelines prepared by the Western Electricity Coordinating Council (WECC), which manages the interconnected power transmission system in the western area of the U.S., has recommended that the latency budget for just the communications component of teleprotection schemes be no greater than 16.7 – 33.3 milliseconds (0.0167 – 0.033.3 seconds), depending on the voltage and criticality of the line. "Communications Systems Performance Guide for Electric Protection Systems," WECC, approved October 22, 2013, at 21. Available at https://www.wecc.biz/Reliability/Communication%20System%20Performance%20Guide%20for%20Electric%20Protection%20Systems.pdf (last visited June 12, 2017).

could reroute or reconfigure the communications links, thereby disrupting the extremely tight operating tolerances required for these systems and causing a false-trip of the breakers.

Southern is therefore pleased to have this opportunity to address technology transitions as they could impact interdependencies between two critical infrastructure industries -- telecommunications and energy.

II. Copper Retirement and Network Change Notification Process

The FCC has invited comment on proposed revisions to its Part 51 network change disclosure rules to determine whether regulatory burdens on carriers can be further reduced while still protecting consumers. Although Southern supports the introduction of new technologies and the easing of regulatory burdens, Southern has serious concerns that some of the proposals are unrealistic at best, or dangerous at worst, with respect to unintended impacts to other critical infrastructure industries, including energy transmission and distribution systems.

The FCC asks whether it should repeal Section 51.332 of the Rules, which was just amended in the *2015 Technology Transitions Order*,[3] or whether it should amend this rule to reduce regulatory burdens on carriers. Among other things, Section 51.332 was amended to (1) increase from 90 days to 180 days the period during which an incumbent Local Exchange Carrier ("LEC") must wait to implement a proposed copper retirement after FCC public notice; (2) require direct notice of copper retirement to retail customers, states, Tribal entities, and the Secretary of Defense; and (3) expand the types of information that must be disclosed.

[3] *In re Technology Transitions*, Report and Order, Order on Reconsideration, and Further Notice of Proposed Rulemaking, 30 FCC Rcd 9372 (2015) (*2015 Technology Transitions Order*).

A. Notice Period Should Not Be Reduced

Southern disagrees that the notice period for a copper retirement should be reduced, and recommends instead that the notice period be increased from 180 days to one year, at least with respect to copper that has been used in the delivery of communications service to electric and gas utilities and other critical infrastructure industries. Even though a "retirement" should not involve a discontinuance, reduction, or impairment of service, customers need time to assess whether and how the proposed replacement service will affect their ongoing operations, then engineer, order, and install the replacement service, assuming it is adequate. This is especially true for enterprise customers in general, and for utilities and critical infrastructure industries in particular, as previously noted by the FCC.[4] As discussed below, it can take *years* to complete the transition from services used to support critical utility operations, even with the full support of the carrier.

B. Retain Expanded Definition of Copper Retirement

As noted in the *NPRM*, maintenance of existing copper facilities remains a concern when an incumbent LEC does not go through the copper retirement process.[5] Southern therefore supports retention of the expanded definition of copper retirement that includes a failure to maintain copper facilities "that is the functional equivalent of removal or disabling." Given the often-times critical nature of the services carried on these facilities, and the need for high availability and quality of service, a failure to maintain is absolutely the same as removing or disabling those facilities.

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[4] *2015 Technology Transitions Order*, 30 FCC Rcd at 9400.

[5] *NPRM*, para. 60.

C. Retain Expanded List of Entities to Be Notified

Southern also urges retention of the expanded list of entities to be notified, including "each entity within the affected service area that directly interconnects with the incumbent LEC's network."[6] Southern's electric and gas service territories encompass a great number of incumbent LEC service territories. Southern directly and exclusively contracts for commercial service with a single carrier, which, in turn, is responsible for either provisioning its own services for Southern or purchasing communications service from other LECs.[7] Direct notification to Southern, as an end user on these other carriers' networks, allows Southern to analyze the potential impact to its operations and take appropriate action.

The potential impacts to Southern's ongoing or planned operations are too great for Southern to simply trust that its primary vendor will timely and accurately report network changes that are reported to it by the underlying carriers. Southern is responsible for maintaining the communications services that it uses to safely and efficiently provide energy services to the public, whether self-provisioned with private fiber or microwave, or whether obtained from local exchange carriers and other service providers. Although Southern expresses no opinion on whether notifications should be provided to residential retail customers, Southern respectfully requests that the FCC maintain the direct notice requirement in Section 51.332 for non-residential retail customers, and critical infrastructure industries specifically.

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[6] 47 C.F.R. §51.332(b)(2).

[7] At present, Southern contracts exclusively with one of the nation's largest local exchange carriers to support its electric operations, and a separate national carrier to support its gas operations.

D. Benefits of Notification Far Exceed the Costs

The *NPRM* asks whether the benefits of notification compare with the costs in terms of slower transition to next generation networks.[8] Southern respectfully submits that compliance with these notification requirements should not appreciably delay transition to next generation networks. Carriers will need to devote a significant amount of time planning, engineering, constructing, and testing replacements for copper that is to be retired, so it is difficult to believe that the issuance of notice to customers would cause any further delay in making the transition.

1. Notification Does Not Hinder Technology Transition

It has been Southern's experience that, even when a carrier notifies Southern of a planned termination or transition date for a service, the carrier itself is often delayed in delivering the replacement service beyond the scheduled termination date. In other words, it is wholly within the carrier's control as to when it will give notice in relation to its readiness to migrate users to replacement services.

It should be noted that the timetables proposed in the *NPRM* are significantly shorter than the notice periods that carriers have supported in state legislation regarding copper retirement. For example, the Illinois legislature recently passed, and submitted to the governor, SB 1839, a bill which was strongly supported by AT&T. Among other things, the bill would prohibit discontinuance of voice telecommunications service to residential customers without at least 255 days' notice *even before* providing notice to the FCC.[9] Moreover, the bill would ensure that service to electric, gas, and water utilities, public safety agencies, and 9-1-1 authorities will not

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[8] *NPRM*, para. 64.

[9] Illinois S.B.1839 (Enrolled version), Section 13-406.1(c); available at http://www.ilga.gov/legislation/100/SB/PDF/10000SB1839enr.pdf (last visited June 11, 2017)

be terminated before 2022, at the earliest, or before 2023 in the case of very large electric utilities or nuclear power plants.[10] Thus, it is clear that the short notice periods in proposed in the *NPRM* are not needed by carriers to stimulate broadband deployment, and will not necessarily expedite broadband deployment.

2. Adequate Notice is Required to Protect Public Safety, Health and Welfare

Lack of notice or inadequate notice would very likely cause customer confusion, inhibit timely assessment of the replacement service, prevent investigation and cutover to alternative replacements, and/or lead to service disruptions that could have severely detrimental consequences to public safety, health and welfare; for example, if service is disrupted to energy utilities or other critical infrastructure industries. Transition to newer communications technologies is a laudable goal, but not at the expense of the policy expressed in Section 1 of the Communications Act that the FCC is to regulate telecommunications "so as to make available, so far as possible, to all the people of the United States, …a rapid, efficient, Nation-wide, and world-wide wire and radio communication service with adequate facilities at reasonable charges, for the purpose of the national defense, [and] for the purpose of promoting safety of life and property through the use of wire and radio communications."[11]

3. Transition Must Carefully Address Interdependence Between Communications and Energy, Two Critical Infrastructure Industries

Interdependence between commercial power systems and commercial telecommunications networks has been a long-standing concern in relation to National Security and Emergency Preparedness ("NS/EP"). In a January 2006 Report, the Telecommunications and

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[10] Illinois S.B.1839 (Enrolled version), Section 13-406.1(b-5).

[11] 47 U.S.C. §151.

Electric Power Interdependency Task Force ("TEPITF"), within the National Security Telecommunications Advisory Committee ("NSTAC"), U.S. Department of Homeland Security ("DHS"),observed that electric power service providers largely rely on private, internal communications systems for "mission-critical functions, such as process control systems, supervisory control and data acquisition (SCADA) systems, generation facilities, transmission grids, and the distribution network, including emergency response communications."[12] TEPITF further noted that many private communications systems operated by electric utilities are protected with back-up power: "These backup capabilities, which are not economical or feasible for commercial networks, are required by utilities to ensure reliable communications in emergencies."[13] Thus, even if commercial communications networks *could* supply all of the utility sector's communications needs, complete interdependence between these critical infrastructures might not be in the national interest. The implications for such interdependencies were further explored in a February 17, 2009, report by the Communications Dependency on Electric Power Working Group of the National Communications System ("NCS") Committee of Principals, which found that because of these interdependencies, long-term outages of electric power could have devastating consequences to millions of people.[14]

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[12] NSTAC Report to the President on Telecommunications and Electric Power Interdependencies: People and Processes: Current State of Telecommunications and Electric Power Interdependencies, January 31, 2006, at 3-1 and 3.2. The Report is reprinted in the following compilation of NSTAC reports: https://www.dhs.gov/sites/default/files/publications/NSTAC_XXIX_Reports_082206_0.pdf (last visited June 15, 2017).

[13] *Id.*

[14] Communications Dependency on Electric Power Working Group Report, "Long-Term Outage Study" National Communications System Committee of Principals, February 17, 2009.

More recently, the U.S. Department of Energy ("DOE"), in conjunction with DHS, highlighted the interdependence of energy and other critical sectors, including communications, in the 2015 Energy Sector-Specific Plan, which was in turn responsive to the 2013 National Infrastructure Protection Plan:

> During the last half of the 20th century, technical innovations and developments in digital information and telecommunications dramatically increased interdependencies among the Nation's critical infrastructures. The energy infrastructure provides essential fuel to all critical infrastructure sectors, and without energy, none of them can operate properly. Thus, the Energy Sector serves one of the four lifeline functions, which means that its reliable operation is so critical that a disruption or loss of energy function will directly affect the security and resilience of other critical infrastructure sectors. In turn, the Energy Sector depends on many other critical infrastructure sectors, such as transportation, information technology (IT), communications, water, financial services, and government facilities. A disruption in a single facility of capability can generate disturbances within other infrastructure or sectors and over long distances. A series of related interconnections can extend or amplify the effects of a disruption.[15]

Although private communications networks are normally preferred by utilities for critical applications, the reality is that radio spectrum is not readily available to utilities in many areas of the country, and the construction of private networks to every location can be prohibitively expensive. Utilities remain dependent on commercial communications services, just as commercial communications providers (and their customers) are increasingly reliant on availability of commercial power (aside from relatively modest amounts of back-up power on the networks, and whatever back-up power customers choose to purchase and install). Thus, in considering the impact to consumers from communications technology transitions, "consumers"

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[15] Energy Sector-Specific Plan 2015, U.S. Department of Homeland Security, at 19 (emphasis added); available at: https://www.dhs.gov/sites/default/files/publications/nipp-ssp-energy-2015-508.pdf (last visited June 15, 2017).

must encompass energy utilities, as well as the consumers of energy services, which, in turn, includes telecom service providers and their customers. In short, disruption to telecom communications services on which utilities rely could cause cascading disruption to the operation of commercial telecom networks and to their customers; a vicious cycle of interdependence that would make it significantly more difficult for both sectors to restore normal service.

Helping carriers transition to newer technology on an expedited timetable should not be an end unto itself. Rather, the FCC should ensure that new technologies, and the transition to those technologies, will achieve the paramount goal of maintaining "adequate facilities at reasonable charges" for "national defense" and "the purpose of promoting safety of life and property."[16] Preserving the ability of utilities to safely and efficiently produce, transmit, and deliver energy service to the public should not be an after-thought.

E. Rules Should Continue to Require Notice of Impact to Terminal Equipment

Section 68.110(b) requires a wireline carrier to give a customer adequate written notice if the carrier intends to make changes to its facilities, equipment, operations or procedures that can reasonably be expected to render the customer's terminal equipment incompatible with the carrier's facilities. Notice is required so that the customer can have an opportunity to maintain uninterrupted service. The FCC has invited comment on the benefits and costs of this rule, and whether the benefits outweigh the costs. As noted above, the burden in providing notice seems insignificant in comparison to the costs and public safety risks that could be caused by disruption to enterprise users that may have invested significantly in terminal equipment and/or that depend

[16] 47 U.S.C. §151.

on these devices for critical operations. As noted in the *2015 Technology Transitions Order*, wireline carriers have access to a database of terminal equipment certified as compliant with Part 68, so it should not be difficult for carriers to assess how their network changes might render customers' terminal equipment incompatible.[17]

III. Streamlining the Section 214(a) Discontinuance Process

The FCC has invited comment on proposals to shorten timeframes and revise processes for applications under Section 214(a) to discontinue certain legacy services: (1) applications that grandfather existing customers; and (2) applications to discontinue previously grandfathered legacy data services. The FCC has also requested comment on whether a carrier seeking to discontinue service should continue to take into account retail customers of the carrier's wholesale carrier-customers, and whether it may allow a carrier to discontinue service, without a Section 214 discontinuance application, if the discontinuing carrier's service overlaps with an alternative fiber, IP-based, or wireless service.[18]

A. Timelines Should Not Be Reduced for Applications to Grandfather Legacy Services

The FCC proposes to reduce to 10 days the comment period for applications to grandfather low-speed legacy services for existing customers, and to auto-grant such applications on the 25th day after public notice. On the one hand, authority to continue service to existing customers is benign. However, the flip-side of this statement is that the carrier would be authorized to cease accepting new orders for service with only 10 days for comment and a 25-day period for the Commission to review the application and any comments.

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[17] *2015 Technology Transitions Order*, 30 FCC Rcd at 9477.

[18] *NPRM*, paras. 95-96.

For electric utilities and other critical infrastructure industries that must spend significant time in planning and engineering communications systems to support their operations, 10 days' notice is woefully inadequate. A customer may be deep into system design, only to find that the carrier intends to soon discontinue a service that the customer assumed would be available for the planned operation. The customer will need to either go back to the drawing board and redesign its intended operation, or file an objection and hope the FCC acts in a timely manner to preserve availability of the service. In either case, the short notice and comment periods will make it very difficult for utilities and other large enterprise users to evaluate these notifications and respond in a timely manner.

For the same reasons, the Commission should not allow grandfathering applications to be auto-granted immediately upon filing, or to forbear from requiring Section 214 authority for applications that propose grandfathering. The FCC suggests that auto-grant or forbearance might be appropriate for applications where the carrier has not sold the service to any new customer for a particular period of time, or if only a limited number of customers continue to take the service. However, those criteria also suggest that the carrier would risk very little in giving adequate notice of its plan to cease accepting new orders for a service for which the carrier claims there is no demand. Conversely, adequate notice would be of benefit to any prospective customer who is in the middle of a system design that would depend on the continuing availability of the service.

B. Transitions Must Not Hinder Mission-Critical Communications

In the *NPRM*, the FCC states that it agrees with the National Telecommunications and Information Administration ("NTIA") that "the transitions from the provision of old communications services to new 'must not disrupt or hamper the performance of the mission-critical activities, of which safety of life, emergency response, and national security are the most

prominent examples."[19] The FCC asks about the impacts to NS/EP communications, including NS/EP priority services such as the Telecommunications Service Priority System ("TSP"). The FCC seeks comment on NTIA's request that carriers be required to state in their Section 214(a) discontinuance applications whether and to what extent they have discussed the proposed network change with affected federal customers, and what actions the carriers have taken or what plans, if any, they have made to ensure the continuity of mission-critical agency communications networks, systems, and services.[20]

Southern concurs with NTIA and the FCC that technology transitions must not disrupt or hamper mission-critical communications. However, the Commission should not limit its attention to services provided to government agencies, but should also consider services provided to non-government entities that support public safety, health, and welfare. NS/EP communications are not limited to government agencies, and programs intended to establish priority for NS/EP communications are also available to non-government entities that support NS/EP. Telecommunications services used by electric and gas utilities typically qualify for TSP priority level 3 because they are vital to maintaining the health and safety of the U.S. population in times of a national, regional, or serious local emergency.[21]

The Department of Homeland Security ("DHS") has granted TSP designations for many telecommunications services used by Southern; services that DHS has agreed are critical to supporting NSEP. These services include those used for substation wide area networks or for backhaul from land mobile wireless sites. The Commission should ensure that it oversees

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[19] *NPRM*, para. 82.

[20] *NPRM*, para. 83.

[21] 47 C.F.R. Part 64, Appendix A.

technology transitions with due regard for detrimental impact on services that have been explicitly determined to support NS/EP communications or that are otherwise used to support the nation's critical infrastructure.

C. Greater Notice is Required to Discontinue Previously-Grandfathered Services

The FCC proposes to adopt a streamlined discontinuance process for previously grandfathered legacy data services. The FCC has invited comment on allowing a 10-day comment period for such applications, and to auto-grant such applications on the 31st day, if the service was previously grandfathered for a period of at least 180 days. This notice period is woefully in adequate for many legacy services used by Southern.

By way of example, Southern received notice several years ago that its primary local exchange carrier was discontinuing frame relay to approximately 600 locations that were part of Southern's substation wide area network. The notice stated that service would be discontinued in 36 months. In fact, it took all of 36 months to complete the transition, even with the full support of the carrier and its furnishing of a project manager to help coordinate the transition. This project required the testing of potential replacement technologies, careful adjustments to Southern's high-voltage protection schemes, construction of the replacement facilities, cut-over, and testing of the replacement services. It would have been impossible for Southern to complete this transition in 12 months, and would have been impossible for the carrier to complete the transition in 12 months. In many instances during this transition, Southern had to wait for the carrier to complete designs for the replacement services and/or implement measures to protect its

own network from electrical hazards before the carrier could deliver replacement service to Southern.[22]

Southern recommends that an application to discontinue a grandfathered service -- or any service provided to an electric or gas utility -- include a demonstration that alternative comparable data services are available throughout the service area from the discontinuing provider or a third party. In either case, the demonstration should identify the alternative service, an explanation of how that service provides the same or better capacity, service levels, and reliability as the service to be discontinued, and at comparable cost.

D. Retain Requirement to Consider Impact on Retail End-User Customers

Southern urges the FCC to retain the requirement that a discontinuing carrier consider impact on retail end-user customers of that carrier's wholesale carrier-customers. As discussed above, because of the geographic scope of Southern's electric service territory, Southern exclusively contracts for commercial service with a single carrier, which, in turn, is responsible for either provisioning its own services for Southern or purchasing communications service from other LECs. Direct notification to Southern, as an end user on these other carriers' networks, allows Southern to analyze the potential impact to its operations and take appropriate action. If Southern were a direct customer of the discontinuing carrier it would be required to provide notice to Southern. A user should not lose its right to receive notice of a planned discontinuance

[22] Stray current going to ground around high-voltage electrical equipment, such as at electric substations, will follow the path-of-least-resistance, which, if not properly addressed in the design of the substation or the communications facilities serving that location, will be conducted along the communications facilities, with potential for serious damage to property and injury to personnel. It is therefore essential that carriers work closely with electric utilities to address the potential impact of "ground potential rise." This will, of necessity, delay installation of replacement communications facilities serving these locations.

by the underlying carrier just because it has chosen to consolidate its service arrangements through a single carrier. Discontinuance of service by the underlying carrier does not merely terminate service to the "wholesale" carrier; it terminates service to an end user and therefore requires compliance with Section 214(a) with respect to the end-user that is most directly affected by that discontinuance.

The FCC asks whether to streamline the application requirements, or eliminate the need for a discontinuance application, if the discontinuing carrier's service overlaps with an alternative fiber, IP-based, or wireless service.[23] Southern has serious concerns with the idea of a discontinuing carrier making its own assessment -- and without notice to users or an opportunity to comment -- of whether suitable alternatives are available to users whose service is discontinued. Section 214(a) was adopted by Congress for a reason: to ensure that carriers do not unilaterally or precipitously discontinue service to a community or part of a community without the Commission having an opportunity to determine whether the present or future public convenience and necessity would be served thereby. Compliance with Section 214(a) is not so onerous that it should be waived to the detriment of users who might not have suitable alternatives.

IV. The "Functional Test" Standard for Analyzing a Discontinuance

In the *Request for Comment*, the FCC asks whether it should continue to look beyond the terms of a carrier's tariff or service agreement and consider the totality of the circumstances from the perspective of the relevant "community" when determining whether a service is

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[23] *NPRM*, paras. 95-96.

discontinued, reduced or impaired under Section 214(a).[24] Southern believes that, while it is appropriate to give the language of the tariff or service agreement the strongest weight in this analysis, any ambiguity should be construed against the carrier under traditional principles of contract interpretation, together with an opportunity for users to bring other information to help in the analysis. By holding carriers to a higher standard, they will be incentivized to make their tariffs or services agreements more explicit, thereby minimizing the potential for disputes over whether a network change constitutes a reduction or impairment of "service."

WHEREFORE, THE PREMISES CONSIDERED, Southern Company Services, Inc. respectfully requests that the Commission take action in this docket consistent with the views expressed herein.

Respectfully submitted,

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[24] *Request for Comment*, para. 115